

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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KING DRUG COMPANY OF FLORENCE :

INC. <u>et al.</u> ,	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	No. 06-cv-1797
v.	:	
	:	
CEPHALON, INC., <u>et al.</u> ,	:	
	:	
Defendants.	:	

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VISTA HEALTHPLAN, INC., et al. :

Plaintiffs,	:	CIVIL ACTION
	:	No. 06-cv-1833
v.	:	
	:	
CEPHALON, INC., <u>et al.</u> ,	:	
	:	
Defendants.	:	

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APOTEX, INC., :

Plaintiff,	:	CIVIL ACTION
	:	No. 06-cv-2768
v.	:	
	:	
CEPHALON, INC., <u>et al.</u> ,	:	
	:	
Defendants.	:	

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FEDERAL TRADE COMMISSION, :

Plaintiff,	:	CIVIL ACTION
	:	No. 08-cv-2141
v.	:	
	:	
CEPHALON, INC.,	:	
	:	
Defendant.	:	

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**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2011, upon consideration of Defendant Cephalon, Inc.'s Motion for Leave to File Two Consolidated Summary Judgment Briefs, IT IS ORDERED that the Motion For Leave is GRANTED. Cephalon may file one consolidated opening brief, not to exceed 50 pages, to address issues common to all Plaintiffs, and one consolidated opening brief, not to exceed 50 pages, to address all remaining claims.

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Mitchell S. Goldberg, J.

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Plaintiff,	:	CIVIL ACTION
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FEDERAL TRADE COMMISSION, :

Plaintiff,	:	CIVIL ACTION
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	:	
CEPHALON, INC.,	:	
	:	
Defendant.	:	

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**DEFENDANT CEPHALON, INC.'S MOTION FOR LEAVE TO FILE TWO  
CONSOLIDATED SUMMARY JUDGMENT BRIEFS**

Defendant Cephalon, Inc. ("Cephalon") hereby files this motion for leave to file two consolidated summary judgment briefs as set forth below.

1. Pursuant to this Court's Scheduling Order, in each of the four pending cases, Cephalon may file one brief of up to 50 pages in support of its motion for summary judgment.

*See* Scheduling Order 4, April 27, 2010, Docket No. 280.

2. To reduce the number of pages submitted and to streamline the presentation of the issues for the convenience of the parties and the Court, Cephalon proposes to file two briefs instead of four: one brief to address issues common to all Plaintiffs and a second brief to address additional issues not raised by the FTC, including sham and *Walker Process* (raised by Direct Purchasers, End Payors, and Apotex), state antitrust, unfair trade practice and consumer protection claims (raised only by End Payors), and patent misuse and tortious interference (raised only by Apotex). Cephalon therefore seeks leave to file the following briefs, with the following page limits:

- One consolidated opening brief, not to exceed 50 pages, to address issues common to all Plaintiffs.
- One consolidated opening brief, not to exceed 50 pages, to address all remaining claims.
- As required by this Court's Policies and Procedures, Cephalon will also be filing a single separate Statement of Undisputed Material Facts in support of its motion(s).

3. While Cephalon will endeavor to be as succinct as possible, Plaintiffs have challenged the settlements at issue on a variety of grounds, *see King Drug*, 702 F. Supp. 2d 514, 534 (E.D. Pa. 2010), requiring the briefing requested herein.

4. The parties have conferred about Cephalon's motion for leave to file two consolidated summary judgment briefs. The FTC does not oppose Cephalon's motion.

5. Direct Purchaser, End Payor, and Apotex Plaintiffs intend to oppose Cephalon's Motion for Leave to File Two Consolidated Summary Judgment Briefs.

Wherefore, for the foregoing reasons, Cephalon requests the Court grant leave to file two briefs in support of Cephalon's motion(s) for summary judgment as outlined above.

Dated: August 23, 2011

Respectfully submitted,

/s/ James C. Burling, Esq.  
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	:	
CEPHALON, INC.,	:	
	:	
Defendant.	:	

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**DEFENDANT CEPHALON INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS  
MOTION FOR LEAVE TO FILE  
TWO CONSOLIDATED SUMMARY JUDGMENT BRIEFS**

Defendant Cephalon, Inc. respectfully submits this memorandum of law in support of its Motion for Leave to File Two Consolidated Summary Judgment Briefs.

**I. The Court Has Discretion to Determine the Length and Content of Any Brief Filed in Support of a Motion.**

Pursuant to this Court's Scheduling Order, in each of the four pending cases, Cephalon may file one brief of up to 50 pages in support of its motion for summary judgment. *See* Scheduling Order 4, April 27, 2010, Docket No. 280. To reduce the number of pages submitted and to streamline the presentation of the issues for the convenience of the parties and the Court, Cephalon proposes to file two briefs instead of four: one brief (not to exceed 50 pages) to address issues common to all Plaintiffs and a second brief (no to exceed 50 pages) to address additional issues not raised by the FTC, including sham and *Walker Process* (raised by Direct Purchasers, End Payors, and Apotex), state antitrust, unfair trade practice and consumer protection claims (raised only by End Payors), and patent misuse and tortious interference (raised only by Apotex). While Cephalon will endeavor to be as succinct as possible, Plaintiffs have challenged the settlements at issue on a variety of grounds, *see King Drug*, 702 F. Supp. 2d 514, 534 (E.D. Pa. 2010), requiring the briefing requested herein.

Adjustment of the length and content of any brief filed in support of a motion is at the discretion of the Court. *See* Judge Goldberg's Policies and Procedures, Civil Matters, sec. 8. Cephalon has presented good cause for adopting its proposal to streamline the presentation of issues on summary judgment by permitting Cephalon to file two consolidated summary judgment briefs. Cephalon respectfully requests that the Court grant its motion to file two briefs instead of four.

Cephalon also attaches a proposed order, allowing Cephalon to file one consolidated opening brief, not to exceed 50 pages, to address issues common to all Plaintiffs, and one consolidated opening brief, not to exceed 50 pages, to address all remaining claims.

**II. Conclusion.**

For the reasons set forth in this Motion and Memorandum, Cephalon respectfully requests that its Motion for Leave to File Two Consolidated Summary Judgment Briefs be granted.

Dated: August 23, 2011

Respectfully submitted,

/s/ James C. Burling, Esq.  
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*Attorneys for Defendant Cephalon, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 23rd day of August 2011 she caused to be filed electronically the foregoing Defendant Cephalon, Inc.'s Motion for Leave to File Two Consolidated Summary Judgment Briefs, Memorandum in support and proposed Order using the CM/ECF system, which will send e-mail notification of the filing to all counsel of record.

/s/ Nancy J. Gellman

Nancy J. Gellman